AFG Industries, Inc. *and* Local Union 934, International Brotherhood of Electrical Workers, AFL–CIO, Petitioner and Aluminum, Brick and Glass Workers International Union, AFL–CIO, CLC and Greenland Local No. 456, Party in Interest. Case 10–UC–185

October 22, 1992

ORDER

BY MEMBERS DEVANEY, OVIATT, AND RAUDABAUGH

The Petitioner's and the Employer's requests for review of the Regional Director's Order (a pertinent portions of which are attached) are granted as they raise substantial issues with respect to whether this case presents a work assignment dispute, as found by the Regional Director, or a unit placement issue, as urged by the Petitioner. The Board concludes, however, that this issue can best be resolved after the parties have been given an opportunity to address this matter at a hearing. On the basis of the record evidence so presented, the Regional Director and, if necessary, the Board will be better able to assess whether the Petitioner is seeking to represent the employee currently performing the work, as the Petitioner specifically contended in its May 11, 1992 submission to the Regional Director, or whether it merely seeks to have the work reassigned to its bargaining unit, as found by the Regional Director and as would be consistent with some statements in its request for review (''it is implicitly clear and undisputed that the IBEW unit already has the aforementioned jurisdiction''). Accordingly, the case is remanded to the Regional Director for hearing and the issuance of a supplemental decision.

APPENDIX

On May 7, 1992, the instant petition was filed by the Petitioner, seeking clarification of its certified unit of all electrical employees employed by the Employer at its Greenland, Tennessee Plant including electricians, electrician trades helpers, instrument mechanics trades helpers and instrument technicians, excluding all other production and maintenance employees, stores attendant, truck drivers, brick masons, oilers, laborers, tool room attendant, group leaders, chief operators, lab technicians, lab helpers and all other technical employees, plant fire inspector, office clerical employees, professional employees, guards, watchmen and acting foreman and all other supervisors as defined in the National Labor Relations Act, as amended, by adding thereto a job classification which it characterizes as a ''Vibration Analysis Electronic Instrument Technician.''[1] Subsequent to the filing of the petition, as part of the investigation, all parties were solicited to furnish their positions as to whether unit clarification was warranted or appropriate. All three parties filed responses.

The relevant facts are largely undisputed. In February 1992, the Employer purchased electronic testing equipment capable of detecting bearing wear and fatigue prior to actual failure.[2] The Employer assigned the work of operating this equipment to the maintenance department, whose employees are represented in a separate unit by the Party in Interest.

All parties agree that testing for ''bearing wear'' has been performed in the past using less sophisticated equipment. The Petitioner claims that, in the past, vibration analysis has always been performed by technicians using ''different types of electronic equipment.'' The Party in Interest asserts that ''vibration analysis'' has been performed by its maintenance mechanics ''using various techniques and equipment.'' For example, prior to the advent of electronic testing, the problem was diagnosed with a mechanic's stethoscope to determine the source of a vibration. At the suggestion of the Party in Interest, the Employer investigated the cost savings associated with purchasing the currently used testing equipment. Subsequently, the Employer determined that substantial savings could be obtained from performing the testing in-house.

The Employer cites *McDonnell Co.*, 173 NLRB 225 (1968), for the proposition that the petition is properly before the Region. The Employer contends that the ''Employer's production operations have extended and enlarged current production work to new job responsibilities involving diagnostic testing for machine and motor vibration.'' In its *McDonnell* decision, the Board distinguished the holding of the Supreme Court in *James B. Carey, as President of Electrical Workers IUE v. Westinghouse Electric Corp.*, 375 U.S. 261 (1964), to find an accretion to a unit represented by one of two competing labor organizations on facts somewhat similar to the facts extant herein. In *Carey*, the Court had acknowledged the existence of two issues in this area of the law. If the controversy was whether certain work should be performed by workers in one bargaining unit or another, the Court said the Board had no function to perform absent a Section 8(b)(4)(D) charge. If the controversy was to determine which labor organization should represent the employee performing the work, the Board could properly entertain a unit clarification petition. Thus, according to the Supreme Court, the Board can clarify its certification where a certain labor organization seeks to represent additional employees, not where the labor organization seeks additional work for employees within its unit.

I find that the Employer's reliance on *McDonnell, supra*, is misplaced. In *McDonnell*, the clarification petition sought to exclude certain calibration work ''which had not been performed at the time of the certification of the unit.'' Such is not the case in the instant matter, as some form of vibration testing has been performed for a number of years, prior to the purchase of the new testing equipment. Thus, the instant matter does not present a unit question or ''enlargement or extension'' of the Employer's operations. The work remains the same, and is apparently performed by the same employees. The only circumstance which has changed is the method employed in testing for bearing failure. In these circumstances, this case clearly fits a jurisdictional dispute con-

[1] This ''classification'' is apparently of the Petitioner's creation in that no other party uses it or claims such to exist.

[2] The Employer subcontracted this work to an outside firm from May 1, 1991, to May 1992.

troversy, in that it involves a question as to whether certain work is to be performed by the Petitioner or the Party in Interest.[3]

The Petitioner's response is also somewhat evasive. While creating a ''job classification'' to seek, and stating it desires to represent the ''person performing the work,'' the Petitioner also phrases its request over the ''work in question.'' It is clear to me that the Petitioner is asking the Board to assign work to its employees rather than seeking to represent employees doing the work despite its pronouncements which I find were made to fit the circumstances. There is no new classification created to perform those duties, and no accretion can be found.[4] The Board has often stated that accretion is not to be found lightly because it deprives employees of their statutory right to select their own representatives.[5] To find accretion under the situation at hand would not only deprive employees of an opportunity to select their own representation, but would remove said individuals from representation they already enjoy. Such rights should be restricted or altered only under compelling circumstances not here present.[6] Accordingly, I shall dismiss the petition.

[3] Indeed, contrary to counsel's present assertions on behalf of the Employer, the Employer's director of labor relations took the position in a grievance proceeding involving this matter that there was a ''jurisdictional dispute.''

[4] *Carey*, supra; *Graphic Arts Local 289*, 246 NLRB 981 (1979); *Cincinnati Gas Co.*, 235 NLRB 424 (1978); *T.I.M.E-D.C., Inc.*, 225 NLRB 1175 (1978). Compare, *Crown Cork & Seal Co.*, 203 NLRB 171 (1973); *Monsanto Research Corp.*, 195 NLRB 336 (1972); *Gas Service Co.*, 140 NLRB 445 (1963). Cf., *McDonnell*, supra.

[5] E.g., *Pix Mfg. Co.*, 181 NLRB 88 (1970).

[6] E.g., *Dennison Mfg. Co.*, 296 NLRB 1034 (1989).